

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

October 26, 2001

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

OAHU

Report to the Board of Land and Natural Resources on the
Public Informational Meeting Held on the Kaneohe Bay Piers
Amnesty Program

BACKGROUND:

On August 24, 2001, under agenda Item D-29, the Board of Land and Natural Resources (Board) approved the issuance of 151 leases for private, residential, non-commercial piers to various applicants under the Kaneohe Bay Piers Amnesty Program. The Board amended staff's recommendation by:

- 1) Requiring a performance bond for all leases, whether by one-time payment or annual lease rent, at \$20 per square foot;
- 2) Making the authorization to amend all prior Board actions from April 12, 2001 on for which Board approved the issuance of a pier lease in Kaneohe Bay subject to approval by the Chairperson and the Department of the Attorney General;
- 3) Instructing staff to hold an informational meeting for all applicants to go over the implementation process;
- 4) Requiring staff to report on the results of the informational meeting; and
- 5) Requiring staff to report back to the Board on the status and process for non-residential piers.

This submittal fulfills items 4) and 5).

REPORT ON INFORMATIONAL MEETING:

On Thursday, September 27, 2001, staff conducted a public informational meeting on the Kaneohe Bay Piers Amnesty Program. This meeting was held at the Kaneohe Community and Senior Center. Participants in the Amnesty Program were notified via the letters notifying them of the August 24th Board results. Also, notification was posted onto the Land Division's Kaneohe Bay Piers Amnesty Program website.

The meeting was well attended with somewhere in the neighborhood of 50 people. Staff provided the attached handout (Exhibit A) which included the agenda, process flowcharts and a sheet of paper for participants to write down questions or concerns. Staff's presentation included:

- History of the Kaneohe Bay Piers Amnesty Program, including identifying all of the actions taken by the Board

- Explanation of the two alternatives to determine lease rent (i.e., approved methodology and independent appraiser) - approved methodology was reviewed
- Report on the Department of the Attorney General's opinion that the Board does not have statutory authority to provide rental credits for past payments already made under existing revocable permits and that such waiving of lease payments may be a breach of ceded land trust obligations
- Explanation of the two alternatives to pay lease rent (i.e., one-time payment and annual lease rent) - paying annually will require rental reopenings
- Review of the process flowcharts, including the lease disposition and encroachment processes
- Review of items the applicants will be responsible for
- Information on how to find out more about the program (visit website, phone numbers to call)

Staff's presentation was followed by public testimony or questions. Comments were grouped into the following main issue areas (+ indicates approximate number of people who spoke on the issue):

Rent:

- 1) Rent is okay++
- 2) Rent never went to a hearing; not aware of Board meeting++
- 3) Comparison to other states indicates this is not fair amount+++
- 4) Use of commercial rates (50%)++
- 5) Should use fixed/flat amount for everyone; not tax assessment+

Bond:

- 1) Bond is not fair; bond should not be required; makes entire deal unworkable++++
- 2) If bond is imposed, will tear pier down (cannot afford)+++
- 3) Unclear what the purpose of the bond is+
- 4) Fear of piers not being maintained are not realistic; since part of residence, people will take care of them; State should not worry about removal of pier++
- 5) Should use rent amount to cover bond+

Insurance:

- 1) Insurance should not be required+
- 2) Questioned whether State has ever been involved in any lawsuit regarding a residential pier+

Deadline:

- 1) July 2002 deadline is too short; need more time to decide whether to participate++
- 2) Questioned why the July 2002 deadline when the Act sunsets in 2005+
- 3) Encroachments will take a long time to resolve+

- 4) The law sunsets in 2005; if we can put this off for a few years, it goes back to the way it was before+

Miscellaneous:

- 1) Country is in recession; people can't afford this right now; not the right time+
- 2) State will end up paying for removal because people won't be able to afford+
- 3) Want Land Board at community meetings, not staff who can't make decisions+
- 4) Want to hire an attorney to sue the State+++++

Based on a show of hands at the conclusion of the meeting, the two major concerns were the bond and the rent formula. Some were also concerned with the insurance requirement and the deadline. Most wanted to see the Board at the community meetings.

Attached as Exhibits B, C and D are written concerns received about the Kaneohe Bay Piers Amnesty Program.

STAFF'S RESPONSE TO CONCERNS:

Rather than deal with all of the individual issues raised, staff will respond to the two major issues: rent and performance bond.

RENT:

Although it was difficult for staff to wade through the emotional and generalized complaints of the pier owners, staff believes there are two primary complaints regarding the rent. First, the 50% figure used in the formula is too high because commercial examples were inappropriately used. Second, the formula is not in line with mainland states.

The 50% figure in the formula represents the value of the submerged land as a percentage of the value of the abutting fast land. In our submittal of February 23, 2001, staff explained that the 50% figure has historically been used by the Land Division in appraising residential pier rents and is used in an identical formula by the Department of Transportation, Harbors Division when leasing submerged lands for commercial purposes and by the Division of Boating and Ocean Recreation when leasing submerged lands for commercial and recreational boating activities.

Staff provides the following example rents calculated for specific parcels.

	Pier	2000-2001				
	Area	Land Value	Lot Area	Value	Consideration	
Average	328	\$ 366,164	12,502	18.32	\$ 5,129	
Median	258	\$ 334,500	8,944	18.68	\$ 4,205	
Highest Land Val	330	\$ 181,700	2,213	41.05	\$11,981	
Lowest Land Val	150	\$1,061,600	62,315	8.52	\$ 1,130	
Biggest Pier	1300	\$ 599,400	22,703	13.20	\$15,176	
Smallest Pier	32	\$ 380,500	12,606	15.09	\$ 427	

The research of mainland states' pier rents, conducted by a legislative analyst at the request of Representative Colleen Meyer (who is a pier owner), is attached to the Protect Our Shoreline Ohana letter dated September 27, 2001 (Exhibit C).

The 50% figure and the comparison to mainland states need to be understood within a certain context - that of the Public Land Trust (not to be confused with the Public Trust Doctrine). Staff contacted Washington State who, according to the legislative analyst's research, does not charge any fees or rents for submerged lands.

When Washington was admitted to the Union in 1889, Congress granted 3 million acres of forests, prairies and grasslands as "school land" grants. These lands are held in trust and must be managed primarily to generate income for the state's Common Schools (kindergarten through 12th grade), colleges and universities, charitable institutions, prisons, improvements to public buildings at the Capitol, local services and the state general fund. In addition, with statehood, Washington became the owner of about 2.6 million acres of aquatic lands, including tidelands, shorelands and the beds of Washington's marine waters. These lands are managed as a "public trust" for all the people of Washington.

When Hawaii became a state in 1959, the federal government transferred over one million acres of land ceded to the federal government in 1898. The Admission Act provided that these lands, former Crown and Government lands ceded to the United States at annexation, and the proceeds from the sale of other disposition of any such lands were to be held by the state as a public trust to be used for one or more of five purposes (support of public schools and other public educational institutions, betterment of the conditions of native Hawaiians, development of farm and home ownership, making of public improvements and public use). The Attorney General has opined that Hawaii's submerged lands are classified as part of this public land trust.

Without going into a lengthy dissertation, staff would only like to point out that there is an inherent difference in Hawaii's submerged lands and how they are managed versus the mainland states'. Hawaii's submerged lands are part of the public land trust which must be managed for one or more of the five purposes. The aquatic lands in Washington are not part of their school land trust and is guided by different principles, primarily encouraging widespread recreational use by the public. In fact, Washington State staff mentioned that even commercial marinas are charged below appraised values in Washington to meet this goal.

Regarding the comparison to commercial uses of submerged land, staff notes that the commercial use would be accounted for in the fast land value.

Finally, in reviewing the example rent amounts, staff notes that the one-time consideration, on average, breaks down to about \$93 per year or \$7.70 per month. Staff believes this is reasonable and not overly burdensome, particularly since the large majority of these piers have already existed (illegally) for many years

without any compensation to the trust.

PERFORMANCE BOND:

On the issuance of the pier leases, staff recommended that a performance bond be required only where an applicant chooses to pay annually. This recommendation was based on the belief that: 1) there were minimal performance issues where a one-time payment was made and 2) the Surrender provision language was sufficient to enforce removal upon the termination of the lease.

At the meeting of August 24, 2001, the Board amended this recommendation to require a performance bond for all lessees in the amount of \$20 per square foot. This amendment was based on ensuring the State has solid recourse to enforce removal of the pier upon termination of the lease. The amount was based on staff's research that removal would cost approximately \$20 per square foot.

The following are example performance bond amounts using the same properties used above for the consideration examples:

	<u>Pier Area</u>	<u>Consideration</u>	<u>Perf. Bond Amt.</u>
Average	328	\$ 5,129	\$ 6,560
Median	258	\$ 4,205	\$ 5,160
Highest Land Val	330	\$11,981	\$ 6,600
Lowest Land Val	150	\$ 1,130	\$ 3,000
Biggest Pier	1300	\$15,176	\$26,000
Smallest Pier	32	\$ 427	\$ 640

Staff researched other alternatives to charging the \$20 per square foot that would still provide for enforcement of removal. Staff's findings and recommendations are presented under separate submittal ("Amendment to Prior Board Action of August 24, 2001, Agenda Item D-29").

REPORT ON NON-RESIDENTIAL PIERS

At the Board meeting on August 24, 2001, it was noted that one of the applicants on the list for a pier lease (YWCA) was not using the pier for residential purposes. As such, the pier did not qualify for a direct lease pursuant to Act 261, SLH 2000 which was specifically for private residential noncommercial piers. The Board asked staff to follow up on this issue.

Staff's research found that there were three non-residential, noncommercial piers at Kaneohe Bay, including the YWCA, Habilitat, Inc., and Kaneohe Yacht Club. All three are non-profits. The Kaneohe Yacht Club obtained a Conservation District Use Permit (CDUP), a Department of Transportation permit and has been paying under Revocable Permit No. S-5407. Habilitat, Inc. obtained a CDUP but did not obtain a land disposition. According to our records, the YWCA did not obtain any permits or approvals.

To clarify, Section 1 of Act 261, SLH 2000 (see Exhibit E), authorized the Board to directly negotiate leases of State submerged lands for private residential noncommercial piers. Section 3 of the same Act deletes the requirement to obtain prior

October 26, 2001

Governor and Legislature approval for noncommercial piers (with no mention of "residential").

Staff drafted the attached legislation (see Exhibit F) for inclusion in the Administration's package. This amendment to Act 261, SLH 2000, deletes the word "residential" in Section 1 of Act 261, therefore allowing the Board to directly lease submerged lands for private nonresidential noncommercial piers. Upon its enactment, staff could proceed with obtaining Board approval for the three non-residential pier applicants and processing the leases along with the residential piers.

If this legislation is not introduced or not enacted:

- 1) All three applicants would not require a CDUA. Kaneohe Yacht Club and Habilitat applied for and obtained CDUA's, while the YWCA's pier is covered under the master CDUA approved at the Board's meeting of July 13, 2001. The master CDUA did not delineate between residential and non-residential piers.
- 2) Habilitat and the YWCA would need to obtain a land disposition (revocable permit).

Respectfully Submitted,

/s/

DIERDRE S. MAMIYA
Assistant Administrator

APPROVED FOR SUBMITTAL:

/s/

GILBERT S. COLOMA-AGARAN, Chairperson